

PT 00-40

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

ILLIANA GENEALOGICAL & HISTORICAL SOCIETY)		
)		
Applicant)	A.H. Docket #	99-PT-0041
)		
v.)	Docket #	98-92-64
)		
THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS)	Parcel Index #	DWL 267
)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Everett L. Laury, attorney at law, appeared on behalf of Illiana Genealogical & Historical Society.

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on March 29, 2000, to determine whether or not Vermilion County Parcel Index No. DWL 267 qualified for exemption from real estate taxation for the 1998–assessment year.

Mr. Dale E. Hoover, treasurer of the Illiana Genealogical & Historical Society (hereinafter referred to as the “Society” or the “Applicant”) was present and testified on behalf of the Society.

The issues in this matter include: first, whether the Society is a charitable organization; secondly, whether the Society owned the parcel here in issue and the building thereon during a portion of the 1998-assessment year; and lastly, whether the Society was either in the process of adapting this parcel and portions of the building and the land on which it is located for charitable purposes or actually used this parcel and portions of the building and the land on which it is located for charitable purposes, during a portion of the 1998-assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the Society is a charitable organization. It is also determined that the Society owned this parcel during the period August 14, 1998, through December 31, 1998. Finally, it is determined that the Society was either in the process of adapting this parcel and portions of the building and the land on which it was located for charitable purposes or actually using this parcel and portions of the building and the land on which it is located for charitable purposes during the period August 14, 1998, through December 31, 1998.

It is therefore recommended that a portion of Vermilion County Parcel Index No. DWL 267 and a portion of the building located thereon be exempt from real estate taxes for 38% of the 1998-assessment year. The portion of the building that qualifies for exemption for 38% of the 1998-assessment year includes: the basement, all of the first floor, except for the smaller garage, and on the second floor only the D.A.R. room and the storage dorm. A proportionate amount of the land on which the building is actually located also qualifies for exemption as well as the area of this parcel located outside the land on which the building is actually located. The smaller garage on the first floor and all of the second floor except for the D.A.R. room and the storage dorm and a proportionate amount of the land on which the building is actually located shall remain taxable for the 38% of the 1998-assessment year that the Society owned this parcel.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that Vermilion County Parcel Index No.

DWL 267 was not in exempt ownership and also not in exempt use during the 1998-assessment year was established by the admission in evidence of Department's Exhibit Nos. 1 through 4C.

2. The Society by a warranty deed dated August 5, 1998, acquired Vermilion County Parcel Index No. DWL 267, which is improved with a two story house with a basement. Pursuant to this same deed the Society also acquired Vermilion County Parcel Index Nos. DWL 253 and DWL 254. Parcel Index Nos. DWL 253 and DWL 254 are adjacent to Parcel Index No. DWL 267 and are used by the Society as parking lots. Although the Society acquired all three lots by the same deed, it only applied for a property tax exemption for Vermilion County Parcel Index No. DWL 267. At the hearing Mr. Hoover testified that the Society was only seeking the exemption of Vermilion County Parcel No. DWL 267 in this proceeding. (Dept. Ex. No. 2, B.O.R. Ex. Nos. 1 & 3, and Tr. pp. 52-54)

3. The deed conveying this parcel was executed on August 5, 1998. On August 14, 1998, a closing was held at Vermilion County Title Company at 11:30 A.M. The executed deed and the keys to the building on this parcel were delivered at the closing to Mr. Dale Hoover, treasurer of the Society. (Dept. Ex. No. 2C, Appl. Ex. No. 7)

4. The building on the parcel here in issue is a two-story former residence with a basement. The basement contains two furnaces and a water heater. The first floor contains a lobby, a large book stack area, an office and mail center, a meeting room, a workroom, a kitchen, a microfilm room and two garages. The second floor contains four former bedrooms, a large bathroom containing toilets and showers, another bathroom, a kitchen, a family room, a laundry room, the D.A.R. room and the storage dorm area. (Appl. Ex. Nos. 3 & 4)

5. The Society was incorporated pursuant to the "General Not For Profit Corporation Act" of Illinois on November 23, 1964, for the following purposes:

To bring together those interested in genealogical research and family history; to collect and file genealogical material; to assist persons engaged in research and to promote genealogical research for the benefit of all interested persons. (Dept. Ex. No. 2E)

6. The Society does not have any capital, capital stock, or shareholders. The Society is exempt from Federal Income Tax pursuant to Internal Revenue Code Section 501(c)(3). The Society is also exempt from Illinois Retailers' Occupation Tax and related taxes. (Tr. pp. 25 & 26)

7. The Society has in its collection local histories, township histories and records, municipal and county histories and records, as well as census records which it maintains in its library. The Society has these various records and histories in books, on microfiche, and microfilm. The Society has all of these records catalogued in a card file system. In addition, there are Society members on hand when the building is open to assist people in finding the information which they are seeking. (Tr. pp. 16 & 17)

8. Pursuant to an agreement dated July 31, 1990, between the Society and the Governor Bradford Chapter of the D.A.R. (hereinafter referred to as the "D.A.R.") the Society has possession of the books owned by the D.A.R. and they are included in the Society's library. These books are all identified as the property of the D.A.R. and are housed in the Society's collection. Pursuant to this agreement no rent is paid by the D.A.R. to the Society. Either party may terminate this agreement by a 30 day written notice to the other party. After the termination of this agreement the D.A.R., within a reasonable time, may remove its books from the possession of the Society. (Appl. Ex. No. 6, Tr. pp. 41 & 42)

9. When a person who wants to do genealogical research comes to the building on the parcel at issue one of the volunteers on duty will meet them and ask them what they are looking for and if they need help. The volunteer will then offer to assist them. The Society has approximately 25 members who volunteer their time to come to the building on this parcel and do research for persons who call in, write in, or walk in with a request for research. The goal of the Society is to have two volunteers on duty whenever the building is open to help people who come to the building to do research. (Tr. p. 20)

10. The building of the Society located on this parcel is open Monday through Saturday from 10:00 A. M. to 4:00 P.M. On Tuesdays the building stays open until 8:00 P.M. (Tr. p. 19)

11. The Society publishes some of its research on a quarterly basis. The quarterly publication is known as the Illiana Genealogist. The Society sends out a copy of this publication to each of its members. (Tr. pp. 17-19)

12. The Society maintains a speaker's bureau of approximately four volunteer members. Any local club or group who would like to have a speaker on the subject of genealogy can contact the Society and a speaker will be provided. The speakers do not charge for going out and speaking on the subject of genealogy. (Tr. pp. 19 & 22)

13. Once a month the Society offers a beginning class for persons wishing to do research in the field of genealogy. These classes are open to the public and are offered at no charge. (Tr. p. 21)

14. The Society works with boy scouts, girl scouts, and members of the 4H on genealogy projects which the boys and girls are required to do. There is no charge for the assistance given to the members of the aforementioned organizations. (Tr. p. 22)

15. A member of the Society teaches a genealogy course at Danville Area College. Once during each course, the class comes to the Society's building to see what resources are available. The college students frequently return on their own to do research. The Society does not charge the students for these activities. (Tr. p. 23)

16. Various area middle school and high school teachers frequently assign genealogy problems to students. A student and perhaps a parent will then come to the building on this parcel to do research on this problem. A Society volunteer will then assist them at no charge to find what they need. (Tr. p. 24)

17. On July 22, 1999, the by-laws of the Society were amended to provide for the waiver of fees in cases of need. Before that date, specifically during the 1998-assessment year, it was the policy of the Society to waive or reduce fees in cases of need although there was no provision in the by-laws. (Appl. Ex. No. 10, Tr. pp. 56 & 57)

18. If someone from outside the area calls in or writes in for the Society to do research for them the suggested donation is \$18.00 for two hours of research. The suggested donation for

a person who lives in the area and comes to the Society's building on this parcel to do research with the help of one of the Society's volunteers is \$2.00 for a day. The Society allows other organizations to use its meeting room at no cost provided they agree to and actually do clean it up. (Tr. pp. 30 & 31, 34, & 43)

19. The Society has a copy machine and allows persons doing research to copy its records for 25 cents per page. The Society also sells genealogical forms at cost. The Society publishes the results of its research. These books may be viewed at the Society's building or a person may purchase a copy. (Tr. pp. 30-32)

20. During 1998, the Society had approximately 800 members. During 1998, the dues for a junior member, ages 10 through 18, was \$10.00 per year. The dues for an adult individual membership during 1998 were \$15.00. The dues for an individual and spouse were \$15.50. During 1998 the dues for a life membership for an individual were \$200.00. The dues for a life membership for an individual and spouse were \$240.00. (Tr. pp. 26 & 28, Dept. Ex. No. 2V)

21. As a member of the Society a person is entitled to receive the quarterly publication at no charge. A member is also entitled to assistance in doing research at the building at no cost. (Tr. p. 62)

22. The Society uses its membership lists as a source of volunteers to work at the building and also for the solicitation of contributions. (Tr. p. 27)

23. During the fiscal year ended September 30, 1999, the Society's primary sources of income included membership dues, contributions, research fees, and books sold. (Appl. Ex. No. 8)

24. The Society has received several contributions of furniture and fixtures. Danville Area College contributed file card cabinets. Two couches were donated for use in the meeting room. The Veterans Administration contributed computers to the Society. The City of Danville donated all of the steel shelving for the library in the building on this parcel. Danville Township does snow removal for the Society, and also provides twice a week janitor service. In addition

\$86,000.00 of the \$112,000.00 purchase price of the parcel here in issue and the two adjoining parcels was received by the Society from contributions. (Tr. pp. 44-47)

25. The Society took possession of this parcel on August 14, 1998. During the remainder of August, the first floor of the building on this parcel was repainted and new lighting fixtures were installed in the library area. New carpet was installed on the first floor by September 10, 1998. Steel shelving was moved and installed in the library area by September 22, 1998. Windows were replaced and sealed, the first floor was made handicapped accessible, and all of the books were moved and shelved by September 30, 1998. The building, including the genealogical library, opened on October 5, 1998. (Appl. Ex. No. 7)

26. Beginning on October 5, 1998, the first floor of the building on this parcel was used by the Society for its corporate purposes except for the smaller garage. The smaller garage was vacant and not in use during the period October 5, 1998, through December 31, 1998. On the second floor the only rooms in use for the purposes of the Society during the period October 5, 1998, through December 31, 1998, were the DAR room and the storage dorm. The D.A.R. room was used to store duplicates of the D.A.R. records and other D.A.R. artifacts. The storage dorm was used to store books published by the Society, which were available for sale. The rest of the second floor was vacant and not used during that portion of 1998. In the wintertime the heat is maintained on the second floor at 55 degrees. Also the water is turned off to the bathrooms on the second floor and there are signs in those bathrooms that they are not to be used. Only members of the Society working in the building are allowed to go up to the second floor. (Tr. pp. 58-60, Dept. Ex. No. 2U, Appl. Ex. No. 3)

27. The Society accepts records from Vermilion County, the City of Danville, and Danville Township as those governmental units are preparing to dispose of those records. The Society places the aforesaid records in its library and preserves them for the future benefit of the local citizens. (Tr. pp. 54-56)

28. The Society has obtained and the record contains copies of resolutions from each of the taxing districts in which Vermilion County Parcel Index No. DWL 267 is located. These

resolutions state that the Society is a charitable organization using Parcel No. DWL 267 for charitable purposes. (B.O.R. Ex. No. 1, Dept. Ex. Nos. 2N-2R)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to this constitutional grant of authority, the General Assembly has enacted property tax exemption provisions. Concerning charitable organizations, 35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity;
- (b) Beneficent and charitable organizations incorporated in any state of the United States
- (f) An historical society, but only if all taxing districts within which the property is situated have adopted a resolution finding that the society is a charitable organization using the property exclusively for charitable purposes

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of

Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989); and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore very clear that the burden of proof is on the applicant to establish that it is entitled to an exemption.

The Society acquired the parcel here in issue on delivery to it of the warranty deed and the keys at the closing on August 14, 1998. I therefore conclude that the Society owned this parcel from and after August 14, 1998.

In the case of Vermilion County Museum Society v. Department of Revenue, 273 Ill.App.3d 675 (4th Dist. 1995), the Court determined that a museum containing historical displays and artifacts may qualify for a property tax exemption as a charitable organization. It would therefore follow that an organization that accepts, indexes, and makes available for research, former public records and other historical documents for use by the general public may also qualify for exemption as a charitable organization.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down five guidelines to be used in determining whether or not an organization is charitable. Those five guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; and (5) no obstacles are placed in the way of those seeking the benefits. Since during 1998, the Society waived or reduced fees in cases of need, I conclude that the benefits derived are available for an indefinite number of persons, charity is dispensed to all who need and apply for it, and no obstacles are placed in the way of those seeking the benefits. I also conclude that the Society has no capital, capital stock or shareholders, and does not profit from the enterprise. In view of the fact that the Society

received a substantial number of in kind gifts as well as cash contributions for the purchase of this parcel, as well as unrestricted annual contributions, I conclude that the funds of the Society were mainly derived from charity and were held in trust for the objects and purposes expressed in its charter.

The fact that membership dues are not waived or reduced in cases of need is another matter. The memberships are a method of fundraising and recruiting volunteers to work in the library. Being unable to pay the dues only prevents a person from receiving the quarterly publication and voting for directors at the annual meeting of the applicant. It does not prevent a person from engaging in the other activities of the Society. It therefore is not determinative of the question of whether the Society is a charitable organization. See Vermilion County Museum Society v. Department of Revenue, *supra*.

I therefore conclude that the Society is a charitable organization. The Society has also established that it qualifies as a historical society and the record includes a resolution from each of the taxing districts in which the parcel herein is located finding that the Society is a charitable organization using this parcel for charitable purposes during 1998. The provisions of 35 ILCS 200/15-65 require first that an organization establish that it is using its property for charitable purposes. If it is a historical society, the organization must then establish that it has obtained resolutions from each taxing district in which its property is located stating that it is a charitable organization using its property for charitable purposes. In this case the Society has met each of those requirements.

The Society acquired this parcel on August 14, 1998. The Society then proceeded to refurbish and adapt the building so that it could be used by the Society. The adaptation was completed by September 30, 1998, and the building opened on October 5, 1998. Illinois Courts have held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1st Dist.

1977); and Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987).

After the building on this parcel was opened to the public on October 5, 1998, the smaller garage on the first floor was vacant and unused. The aforesaid smaller garage remained vacant and unused throughout the rest of the 1998-assessment year. After October 5, 1998, all of the rooms on the second floor of the house on this parcel other than the D.A.R. room and the storage dorm, were vacant and unused. The aforesaid area remained vacant and unused throughout the rest of the 1998-assessment year. In the case of People ex rel. Pearsall v. The Catholic Bishop of Chicago, *supra*, the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt. In the case of Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983), the Court held that property which was vacant and not used did not qualify for the statutory exemption as property used exclusively for exempt purposes regardless of the owner's intent. I therefore conclude that the smaller garage on the first floor and the second floor except for the D.A.R. room and the storage dorm did not qualify for exemption from August 14, 1998, through December 31, 1998.

It is therefore recommended that a portion of Vermilion County Parcel Index No. DWL 267 and a portion of the building located thereon be exempt from real estate taxes for 38% of the 1998-assessment year. The portion of the building that qualifies for exemption for 38% of the 1998-assessment year includes: the basement, all of the first floor, except for the smaller garage, and on the second floor only the D.A.R. room and the storage dorm. A proportionate amount of the land on which the building is actually located also qualifies for exemption as well as the area of this parcel outside of the land on which the building is actually located. The smaller garage on the first floor and all of the second floor except for the D.A.R. room and the storage dorm and a proportionate amount of the land on which the building is located shall remain taxable for the 38% of the 1998-assessment year that the Society owned this parcel.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
August 17, 2000